

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1872 OF 1991

Vasant Rajaram Shah.

... Petitioner.

V/s.

The State of Maharashtra & Ors. ... Respondents.

....

Mr. N.Y. Walawalkar i/b Mr. A.M. Kulkarni for the
Petitioner.

Mrs. V.S. Mhaispurkar, A.G.P. for Respondent Nos.1
to 5.

....

CORAM : S.J. VAZIFDAR, J.

DATED : 15TH JANUARY 2007.

ORAL JUDGMENT :

1. The Petition is filed to quash and set aside an
order dated 26th February 1991 passed by the learned
Minister for Revenue, arising out of proceedings and
orders I shall refer to in this judgment.

2. Respondent Nos.2 to 5 are the Additional
Commissioner, Pune, the Collector, Sangli, the
Sub-Divisional Officer, Sangli and the Range Forest
Officer, Tasgaon.

3. In 1960 by way of extension of gaathan, 187 small plots were allotted to persons according to their eligibility to enable them to put up very small constructions thereon for residential use. These are small plots allotted to persons. The plots admeasuring about 450 sq.mtrs. and the area permitted to be constructed thereupon is only about 45 sq.mtrs.

4. The Petitioner was allotted plot No.5 on the terms and conditions contained in an allotment letter dated 28th May 1960. Clause 2 required the Petitioner to construct a permanent concrete building within two years admeasuring not more than 1/10th of the total area. Under clause 12 if any of the terms and conditions are violated the allotment would be cancelled.

5. There is no complaint against the Petitioner for not having paid the amount due as provided in clause 1 of the allotment letter. The Petitioner unfortunately failed to complete the construction for a substantial period inter alia due to the illness of his mother who subsequently expired and financial difficulties. It is true that the construction was only of about 45

sq.mtrs. It must however be noted that these plots were given with a view to extend the gaothan and the allottees were persons of only modest means. Unfortunate circumstances, especially financial and emotional would add to the burden of their already modest means.

6. There is no dispute about the fact that the Petitioner did face these unfortunate circumstances and financial difficulties. This is important in view of the circular/policy of the Government to alleviate the difficulties faced precisely by persons such as the allottees of the said plots.

7. It is true that the Petitioner did not build any concrete or permanent construction on the plot till about 1976. He obtained permission from the Vita Municipal Corporation for building on 27th April 1976. He in fact constructed one room and has been in use thereof. He continues to remain in possession of the said plot.

8. Before the authorities the Respondent contended that the Appellant had not constructed a house on the said plot but had only constructed a small shed on one corner of the said plot. Considering the view I have taken I will presume this allegation is to be correct. It is, therefore, not necessary for me to consider the nature of the construction.

9. It would be convenient at this stage to consider in some detail a Resolution of the First Respondent dated 21st November 1957 which has admittedly not been considered in the impugned orders. The Resolution enumerates the various factors which were taken into consideration by the first Respondent including as to whether the time limit for the construction of a building on such plots should be extended and if so, to what terms and conditions such extension ought to be subjected. It is also important to note, as recorded in the Resolution, that the first Respondent considered in their approach to these questions various factors to be taken into account such as encouragement to building activities and the need for assuring the Government a reasonable share in the unearned income. The Petitioner in support of his

contention would be entitled to rely essentially on Point 4 (b). Before setting out the same, it would be useful to note that the first Respondent has even in the other point endeavoured to enable the allottees to utilize and exploit the plots allotted to them in various ways including by permitting transfers on the payment of premium and conversion of the tenure of the land again on payment of premium to the Government. The first Respondent has also formulated schemes for regularizing unauthorized sales no doubt upon charging substantial amounts. Point 4(b) of the Resolution which is important in the present case reads as under

:-

" Point No.4:- The Collector should extend the period for constructing building and condone breach of building conditions with reference to the following principles :-

(a).....
.....

(b) Where it is established that the default is not for reasons beyond the control of the grantee and where difficulties are financial and the grantee is unable to establish that he can solve the difficulties within a year or two, the plot should be resumed and steps should be taken to regrant the plot to him on payment of the difference of the present market value and the occupancy price originally paid or 10 times the non

agricultural assessment to be determined
with reference to the market value
prevalent at the time of regrant,
whichever is greater."

10. I have construed point 4(b) later. It is
important to note at this stage that the clause
contemplates the authorities taking a positive step of
resuming the plot and regranting the same in the
manner stipulated therein. In other words the
authorities and not the plot holders are to initiate
the action of regranting the plots. A plot holder
would be legitimately entitled to presume that in the
circumstances mentioned in the Point No.4(b), the
authorities would follow the process of resuming the
plots and thereafter re-granting the same to them. In
other words, the allottees would be justified in
presuming that it was not necessary for them to
initiate the process for having the plots regranted to
them. There is nothing in the Resolution that
militates, against such construction either.

11. By a letter dated 21st August 1976 addressed
to the Petitioner the Tahasildar stated that as the
Petitioner had not constructed upon the said plot, the
same was forfeited as per an order dated 19th August

1976 issued by the Assistant Collector, Sangli. Admittedly, the order dated 19th August 1976 was not served on the Petitioner prior thereto. Admittedly, again prior to the order dated 19th August 1976 being passed the Petitioner was not heard. Further admittedly, prior to the order dated 19th August 1976 being passed, the Petitioner was not put to notice of any proposed action to that effect. Indeed this is the position even qua the notice of forfeiture dated 21st August 1976. The action against the Petitioner and even his knowledge thereof initiated with the service of the notice of forfeiture dated 21st August 1976 upon him.

12. The Petitioner challenged the order of forfeiture dated 21st August 1976 before the Sub-Divisional Officer, Sangli. The Petitioner on being informed that he ought to prefer an appeal before the Collector did so by filing Appeal No.LND/Appeal No.1/77 before the Collector, Sangli i.e. Respondent No.3. The Petitioner's application/appeal set out the difficulties faced by the Petitioner from the time he was given possession of the said plot including the illness of his mother

and her subsequent demise and the financial difficulties faced by him.

13. Mr. Walawalkar, the learned Senior Counsel appearing on behalf of the Petitioner, submitted, as stated in the application/appeal that possession of the plot was actually handed over in 1967. The view that I have taken would not prejudiced the Petitioner even assuming that possession was handed over in 1960. It is therefore not necessary for me to consider this question of fact. Finally, the application/appeal also sets out the various other contentions regarding the forfeiture having been made without hearing the Petitioner or even giving him notice of the proposed forfeiture.

14. The Collector by a well considered and reasoned order allowed the Appeal setting aside the order dated 19th August 1976. In so far as the Petitioner's plot No.5 was concerned, the order directed the Sub-Divisional Officer - Respondent No.3 to consider the Petitioner's case in the light of the Government Resolution dated 21st November 1957 read with the Land Revenue Rules. It was further ordered

that the extension of time for construction if needed would operate from the date of the order. Finally it was ordered that the allotment in favour of Respondent No.5 may be reviewed and reversed after giving that department a hearing. It appears that meanwhile on 4th April 1997, the Assistant Commissioner has allotted the plot to Respondent No.5. The possession, however, continued with the Petitioner. It was held that the procedure required for forfeiture had not been followed. That the order may have incorrectly observed that the Assistant Collector had not followed the procedure under Section 268 of the Maharashtra Land Revenue Code, 1966 is of no consequences. The fact is that the forfeiture was not only without notice to the Petitioner but without considering the effect and ambit of the Resolution dated 21st November 1957.

15. Pursuant to the aforesaid order, Respondent No.3 - Sub-Divisional Officer by an order dated 27th November 1979 after hearing the Petitioner, correctly considered the Resolution dated 21st November 1957 and granted the Petitioner permission to construct a building on the said plot and cancelled the allotment

dated 4th April 1977 in favour of Respondent No.5. Respondent No.3 further ordered that the plot should be retained by the Petitioner on payment of premium equal to twice the N.A. assessment payable in respect of the plot at the time of his grant for breach of the condition, viz. the non-completion of construction within the period stipulated in the letter of allotment. The Petitioner was granted a period of one year for completing the work.

. Strictly the directions issued by the order dated 27th November 1979 were not in accordance the Government Resolution dated 21st November 1957. Having held in favour of the Petitioner, Respondent No.3 ought to have regranted the plot to Petitioner on making payment as stipulated in Point No.4(b) of the Government Resolution. It is crucial to note here also that the date for determination of the market price should be at the latest the date of this order viz. 22nd November 1979. The Petitioner obviously cannot be prejudiced by fixing the date any later merely in view of the pendency of the proceedings.

16. Respondent No.5 preferred an Appeal before the

Additional Commissioner/Respondent No.2. The
Additional Commissioner by an order dated 30th
September 1980, set aside the orders dated 10th August
1979 and 27th November 1979 on the ground that
Respondent No.5 in whose favour the plot had been
subsequently allotted on 27th November 1957 had not
been heard.

. It is pertinent to note a few things about

this order. Respondent No.2 correctly noted that the
Collector's order dated 10th August 1979 correctly
held that the Assistant Collector/Sub-Divisional
Officer's order dated 19th August 1976 passed without
granting the Petitioner an opportunity of having heard
was an irregularity which vitiated the proceeding.
This is of crucial importance, for while the aforesaid
two orders were set aside, the same was only on the
ground of Respondent No.5 not having been heard. The
forfeiture initiated with the order dated 19th August
1976 was itself held to have been vitiated by the
irregularity of the Petitioner not having been heard.

17. The order, however, expresses a doubt about the Government Resolution coming to the rescue of the Petitioner merely because the construction had not been put up in accordance with the allotment letter. While making this observation, Respondent No.2 does not appear to have construed the Government Resolution and in particular Point No.4(b) at all.

18. The Sub-Divisional Officer by an order dated 30th September 1981 after hearing the parties including Respondent No.5 re-granted the plot to the Petitioner. He further ordered that the Petitioner be informed about punitive non-agricultural assessment charges as per the Government Resolution dated 21st November 1957 and that the same should be recovered within three months. He also ordered the allottee to complete the construction within one year.

19. The order considers in detail inter alia all the aforesaid facts. It is also important to note that the order considers the fact that two other allottees whose plots had also been forfeited had been permitted to retain their plots. After considering

the correspondence between the authorities inter-se, he came to the conclusion that the Petitioner's plot ought to have been reallocated in the similar manner. Indeed it was noted in the order that the papers and proceedings in respect of the said plots disclose that the decision taken in respect of the two plots was precisely in accordance with the Government Resolution requiring the authority to first forfeit the plot and then to re-allot the same to the holders of the plot. This was indeed a fair and responsible approach adopted by the authorities. The Sub-Divisional Officer also considered and construed the Government Resolution dated 21st November 1957 in coming to the conclusion. I am in agreement with the line of reasoning adopted by him.

20. Indeed it is only the Petitioner who could be agreed by this order in so far it stipulates a time limit for completion of the construction of the building. Point No.4(b) of the Government Resolution does not require such a condition to be imposed on the Petitioner upon the plot being regranted to him.

21. The Petitioner's long but successful battle for his shelter ended at this stage. Respondent No.5 challenged the order dated 30th September 1981 by filing Appeal No.4/1981 before the Collector - Respondent No.3. Respondent No.3 by an order dated 6th November 1985 allowed the Appeal and set aside the order dated 30th September 1981 and directed the possession of the plot to be given to Respondent No.5. It is sufficient to note only a few things about the order. Firstly, it is held that a two storied building was to be constructed on the plot. The letter of allotment does not contain any such requirement. Secondly, it remained to be noticed that prior to forfeiture, the Petitioner was neither heard nor informed about the proposed forfeiture depriving him of a right to remedy the breach, if any. What is of crucial importance however, is, that the order does not consider or construe the Government Resolution dated 21st November 1957 and the rights and contentions of the Petitioner based thereon. Though a major part of the Petitioner's case is based on the same circular has not been considered.

22. The Petitioner challenged the order dated 6th November 1985 by filing Appeal No.A.LND.SR.225 before the Additional Commissioner, Pune - Respondent No.2, who by an order dated 12th February 1980 dismissed the same. Respondent No.2 however, sought to get over the difficulty of the absence of the hearing to the Petitioner by holding that after the order of forfeiture his contentions had been considered. I will presume that this post-decisional hearing did not cause any prejudice to the Petitioner. It is however, important to note that even Respondent No.2 rested the order only on the ground that the Petitioner had failed to complete the construction within the time stipulated in the allotment letter. Respondent No.2 also does not even consider/construe the Government Resolution dated 21st November 1957. The further observation that Respondent No.5 is a Department of the Government and that its requirement is genuine is irrelevant to the question whether the Petitioner was entitled to have the plot regranted to him as per the Resolution. In the event, in my view, the order is liable to be set aside.

23. The petitioner challenged the order by filing Appeal No.GAO/3690/2003/R/12 before the learned Minister for Revenue, Government of Maharashtra. By an order dated 31st August 1980, learned Minister vacated the stay order granted by him earlier in favour of the Petitioner. The Petitioner challenged the same by filing Writ Petition No.4060/1990 in this Court. The Writ petition was allowed and the stay earlier granted by the learned Minister to the Petitioner was restored. The Appeal was finally heard by the learned Minister who passed the impugned order dated 26th February 1991.

24. It appears that the learned Minister's attention was not properly invited to some crucial aspects. It further appears that the learned Minister was persuaded to proceed on an entirely incorrect basis. For instance, the order records that it was after due enquiry and after giving reasonable liberty to the Petitioner that the plot had been forfeited and granted to Respondent No.5. If the said observation pertained to the period prior to the order of forfeiture, it is certainly incorrect as I have already noted.

25. What vitiates the order however is the fact that it does not consider the Government Resolution dated 21st November 1957 and the rights of the Petitioner emanating therefrom. The Petitioner had been agitating his rights mainly on this basis. Despite the same, his case in respect thereof has not been considered.

26. The Petitioner is therefore entitled to the benefit of Point No.4(b) of the Government Resolution dated 29th November 1957. The impugned orders are vitiated inter-alia for the reasons that the Government Resolution has not been considered.

27. The Petitioner has been agitating his rights for over 20 years. I do not think it necessary and fair to remand the matter. He is, as I have noted earlier, a person with but limited means and I do not intend adding to his burden by compelling him to go through yet another round of litigation.

28. In the circumstances, the following order is passed :-

(i) The Rule is made absolute in terms of prayer clause (a).

(ii) The order of the Sub-Divisional Officer dated 30th September 1981 is upheld to the extent that it orders the plot to be regranted to the Petitioner. However, the conditions on which it shall be regranted shall be as per Point No.4(b) of the Government Resolution dated 21st November 1957.

(iii) The date for the purposes of assessment of the market price to be paid by the Petitioner is fixed as on 27th November 1979. The condition regarding the Petitioner having to complete the construction on the plot within one year shall however not be applied.

(vi) No order as to costs.
